IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2007

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.32001 of 2002

M. Bhaskaran Reddiar
Kuchipalayam
Kizarungunam Post
Panruti Taluk ... Petitioner

vs.

1. The District Collector
Cuddalore District, Cuddalore - 1.

2. The Special Tahsildar
(Adi Dravidar Welfare)
Cuddalore - 1

3. The District Adi Dravidar Welfare Officer
Cuddalore - 1. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari as stated therein.

For petitioner Mr. A.S. Kailasam

For respondents Mr. A. Shanmugam
Government Advocate

- - - - -

O R D E R

The prayer in the writ petition is for issuance of a writ of certiorari calling for the records of the first respondent which culminated in the order dated 11.07.2002 bearing No.W.2/60266/2001 and to quash the same.

2. The petitioner's case in short, as culled out from his affidavit is as under:

Based on the demands for acquisition of lands for Adi Dravidar & Harijan Welfare, the petitioner's parents and the petitioner himself as well had given huge extents of land during the years 1983, 1986, 1994 and 2000 without raising any objection and even

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without receipt of compensation in full in respect of which cases are still pending in courts. In addition to the above, certain extent of lands has also been given by the petitioner's father immediately after the country's independence, for the purpose of providing exclusive place of worship for the local Adi Dravidars. The extent of 14 acres of land, left out with the petitioner is partly wet and partly dry and has been let out on lease for cultivation of sugarcane for the purpose of supplying the same to the factory of a Company.

While so, the petitioner, on 28.08.2001, had received a notice dated 09.08.2001 in Form-I from the Land Acquisition Officer proposing to acquire 7 acres of dry land which is the access to 7 acres of wet land, asking him to show cause against the same. In response, the petitioner had sent his objections on 11.09.2001 and 14.02.2002 to the first respondent and the same were rejected by the first respondent vide his order dated 11.07.2002, without even affording an opportunity of personal hearing and the main reasons for rejection being that (i) the petitioner's family owns 18.61 acres and hence, the petitioner is not a small farmer, (ii) the petitioner's land has been chosen to settle the Adi Dravidars who have been uprooted from Tiruppapuliyur, (iii) the Samadhi of the petitioner's brother had been constructed in November 2001 to avoid land acquisition.

3. In the counter filed by the first respondent, it has been stated that the order under challenge has been issued, keeping in mind, the need to provide house sites to 120 families living in objectionable poramboke lands in Tiruppapuliyur Town under the provisions of Tamil Nadu Adi Dravidar Welfare Schemes Act, 1978 (in short "the Act"); after complying with the formalities such as issuance of notice under Section 4(1) of the Act in Form-I and completion of field inspection and enquiry under the Act, the Special Tahsildar (ADW) submitted necessary proposals to the Cuddalore District Adi Dravidar and Tribal Welfare Officer recommending the acquisition of petitioner's land measuring 2.71.0 hectares in Keezharungunam village and after due consideration of the records available and the objection filed by the petitioner, the objection petition filed by the petitioner was rejected by way of order under challenge.

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4. Mr. A.S. Kailasam, learned counsel for the petitioner has contended that the firstly, the impugned order is violative of Sections 4(1), 4(2) and 4(3)(b) of the Act. It is also his contention that since the petitioner's family had given a large extent of lands for the benefit of Adi Dravidars and Harijans on various occasions from 1983 to 2000, the negligible extent of land measuring 14 acres of land which in possession of the petitioner should not be acquired.

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5. Further, the counsel for the petitioner has vehemently contended that the vast extent of lands acquired from the petitioner's family since 1983 have not yet been allotted to the beneficiaries and thus, present impugned order lacks *bona fides.* It has also been argued by the counsel for the petitioner that when the existence of the petitioner's brother's tombstone has been mentioned in Objection dated 11.09.2001, the finding in the impugned order that the same has been built only in November 2001 is factually incorrect. Last but not the least, the counsel for the petitioner has strenuously argued that petitioner has been deprived of the opportunity of personal hearing before issuance of the impugned order.

6. The learned counsel for the petitioner, in support of his contention that the petitioner ought not to have been deprived of opportunity of personal hearing, has relied on a Division Bench judgment of this Court reported in 1998 (I) CTC 281 in the matter of Thirumathi Pushpa Bai Bainsingh vs. District Collector Tirunelveli Kattabomman District & Others and the relevant portion reads as under:

> "Considering the fact that the appellant herein was not given an opportunity before passing the order by the Collector, we set aside the order dated 17.02.1997 passed by the first respondent and direct the District Collector, first respondent herein, to pass an order in the above matter, after giving an opportunity of being heard to the appellant herein/petitioner in the writ petition. Accordingly, the order passed in the writ petition is set aside and the writ appeal is allowed."

7. To strengthen his contention that the petitioner should have been afforded an opportunity of personal hearing and should have also been furnished a copy of the report/recommendation of the authorized officer to further put forth his case, the counsel for the petitioner has relied on a recent Full Bench judgment of this Court reported in 2006 (4) CTC 609 in the matter of R. Pari vs. the Special Tahsildar, Adi Dravidar Welfare, Devakkottai (Pasumpon Muthuramalinga Thevar District) & another (paras 27 and 38)

> "It was submitted on behalf of the State that if copy of the report of the authorized officer is to be furnished and opportunity of making a further representation to the District Collector would be given, the

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proceedings may be delayed and the object of the Act for speedy acquisition may be defeated.

We do not think that by furnishing a copy of the report/recommendation of the authorized officer and giving opportunity of making a further representation would unduly delay any such proceedings. In our opinion, if the copy of the report/recommendation of the authorized officer is given to the owner at the time when such report/recommendation is sent to the District Collector and the owner is called upon to make further representation, if any, within a period of two weeks from the date of receipt of such report, the proceedings would not get unduly delayed."

So far as Question No.2 is concerned, since it is construed by us that it is necessary for the Collector to give opportunity to the owner to file further representation on the report/recommendation made by the authorized officer, such copy of the report/recommendation is required to be furnished. We also add that in view of the provisions contained in the Right to Information Act, 2005, the owner would be entitled to copy of the report of the authorized officer."

8. Replying to the contention of the counsel for the petitioner that the petitioner's family has given vast areas of land for the benefit of Adi Dravidars, Mr. A. Shanmugam, learned Government Advocate has contended that the petitioner's father had donated certain extent of lands only in lieu of lands given by the adjacent land owners and that too to gain popularity among the Adi Dravidars.

9. With regard to the extent of lands possessed by the petitioner, the counsel for the respondents has contended that as per the permanent village records, while the petitioner has got 14 acres of land, his family members, namely, wife, daughter and other relatives are owning 4.61 acres of land and as such, the petitioner's family owns 18.61 acres of land and hence, the petitioner cannot be classified as a small farmer.

10. The counsel for the respondents has rebutted the claim of

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the petitioner that he has got access to the wet land only through the dry land and in this connection, he has argued that the petitioner has got access to his wet lands through his borewell site and cart track nearby. It is also his contention that though the petitioner has claimed that his fields are registered for the factory of a Company, he has not produced any evidence to that effect and the same can be decided only at the time of passing of award and payment of compensation.

11. On the aspect of opportunity of personal hearing, the counsel for the respondents has argued that there is no mention in the Act that the party must be given a personal hearing to show cause against the acquisition. In this connection, Mr. Shanmugam has relied on the very same Full Bench judgment of this Court reported in 2006 (4) CTC 609 which is relied on by the counsel for the petitioner and the relevant paragraph reads as under: (para 37)

> "The desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land obviously being very limited, the Court in each case is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the report and affording further opportunity to the land owner to make a further representation is obviously to pinpoint any deficiency in the report of the authorized officer. If any particular aspect has been highlighted by the land owner and has not been considered by the authorized officer, the land owner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the authorized officer has considered the relevant aspects indicated by the objector and made his recommendation, merely because a copy of such report is not furnished and no further opportunity is given to the land owner, may not be a ground to quash the land acquisition proceedings. On the other hand, if important aspects, which have been highlighted by the

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land owner have been ignored by the authorized officer, it may be reasonable to infer non-furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be construed that as a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it is sufficient to quash such acquisition. Ultimately the Court has to judge the prejudice the caused to such person by keeping in view the facts and circumstances in particular case."

12. As against the claim of the petitioner that the acquisition aiming to relocate Adi Dravidars belonging to an entirely different Taluk is untenable, it is the submission of the counsel for the respondents that though the beneficiaries are outsiders, presently, they are residing within a radius of only 5 to 7 kms. and they have also given specific consent statement to occupy the proposed acquisition fields.

13. In reply to the petitioner's contention that the first respondent has failed to consider the existence of his brother's tombstone while passing the impugned order, the counsel for the respondents has contended that the said tombstone has been built by the petitioner only subsequent to receipt of notice with a view to avoid acquisition. To this submission of his, the counsel for the respondents has pointed that the Land Acquisition Officer has made inspection of the site on 24.09.2001 and had observed in his statement that there was no tombstone at all in the site and in view of this, the contention of the petitioner is a fabricated one. The counsel for the respondents has contended that the lands which have been acquired from the petitioner's family have already been allotted to the beneficiaries and in fact, 55 persons have also applied for Group Housing Scheme loan in THADCO. It is the further contention of the counsel for the respondents that there is no specific Act, rules or order or instruction to the effect that the lands should not be acquired from a party who has already given lands for the same purpose.

14. Finally, it is the submission of the counsel for the respondents that the order of the first respondent is purely based on relevant materials and on consideration of full facts and after

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due inspection by the Land Acquisition Officer and superior officers.

15. Heard both sides.

16. Before proceeding to decide the matter on hand which is of utmost public importance, to be more specific concerning the weaker sections of the society, it would be worth referring to the Constitution of India as far as the upliftment of the weaker sections of the society is concerned.

17. Article 21 of the Constitution guarantees right to life. The right to life includes the right to livelihood. Time and again, the Courts in India have held that Article 21 is one of the salient features of the Constitution. The right to livelihood cannot be subjected to individual fancies of the persons in authority. The sweep of the right to life conferred by Article 21 is wide and far-reaching. An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

18. Article 46 to Part IV of the Constitution of India which deals with the directive principles of State policy prescribes that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

19. In furtherance to the above, the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 has been enacted with an extensive jurisdiction covering the whole State of Tamil Nadu in and by which it is declared that this Act is for giving effect to the policy of the State towards securing the principles laid down in Part IV and in particular, Article 46 of the Constitution of India aimed at bringing the under-privileged to the main stream of life in order to achieve egalitarian order of the society. From this it is clear that it is a policy of the Government to implement the Act in a proper perspective by providing and assigning land to the *have nots*, namely, the weaker sections of society in Tamil Nadu by acquiring lands from *haves* by way of acquisition proceedings. The policy of acquiring lands to assign to them is to prevent perpetuation of unjust and feudal order and to prevent concentration of material sources in the hands of chosen few.

20. There are rhetoric words expressed by the litigating parties on the subject as to whether the directive principles of

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State policy are enforceable in nature and the answer is that they certainly are enforceable by making laws. In this regard, reference may be made to a very recent decision of the Supreme Court reported in (2007) 1 SCC 641 in the matter of Daulat Singh Surana & Others vs. First Land Acquisition Collector and Others (paras 40, 41, 42, 44 and 73)

> "Public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.
>
> According to Article 39 of the Constitution, the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The laws made for the purpose of securing the constitutional intention and spirits have to be for public purpose.
>
> In the Constitution of India, some guidelines can be traced as far as public purpose is concerned in Article 37 of the Constitution. The provisions contained in this Part (directive principles of the State policy) shall not be enforceable by any court, but the principles laid therein laid down are nevertheless fundamental in the governance of the country. It shall be the duty of the State to apply these principles in making laws.
>
> Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore, the legislature has left it to the State (Government) to decide what is public purpose and also to declare the need of a given land for the purpose. The legislature has left the discretion to the Government regarding public purpose. The Government has the sole and absolute discretion in the matter.
>
> Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Broadly

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speaking, public purpose means the general interest of the community as opposed to the interest of an individual."

21. The learned counsel for the petitioner has contended that the petitioner has been deprived of the opportunity of personal hearing before the issuance of the impugned order. In support of this contention of his, he has relied on the Full Bench decision of this Court (supra) and in paragraph 27 of the said judgment, with regard to the contention that if a copy of the report of the authorized officer is to be furnished and opportunity of making a further representation to the District Collector would be given, the proceedings may be delayed and the object of the Act for speedy acquisition may be defeated, it was opined that if the copy of the report/recommendation of the authorized officer is given to the owner at the time when such report/recommendation is sent to the District Collector and the owner is called upon to make further representation, if any, within a period of two weeks from the date of receipt of such report, the proceedings would not get unduly delayed. It was further held that the land owner would be entitled to a copy of the report of the authorized officer in order to make further representation.

22. While answering the above contention of the counsel for the petitioner, as rightly pointed out by the counsel for the respondents, it is pertinent to note here that in the Full Bench judgment of this Court, in paragraph 37, it is held that the desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. It is further held that the scope of judicial interference in the matter relating to acquisition of land obviously being very limited, the Court in each case, is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The Full Bench further went on to observe that ultimately, the Court has to judge the prejudice caused to such person by keeping in view the facts and circumstances in a particular case. In that view of the matter, the counsel for the petitioner cannot insist, as a matter of right, that the opportunity of personal hearing must have been given to him.

23. As held in the Full Bench judgment, to find out whether any prejudice has been caused to the petitioner, it would be relevant to refer to provisions of Section 4(2) and 4(3) (b) of the Act which reads as under:

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4. Power to acquire land:

2 Before publishing a notice under sub-section (1), the District Collector or any officer authorized by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorized may be interested in such land, to show cause why it should not be acquired.

3 b Where any officer authorized by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorized shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report, the District Collector may pass such orders as he may deem fit.

24. From a reading of the above provisions, it is crystal clear that there is no provision to the effect that personal hearing has to be afforded at the stage when the authorized officer sends his report to the District Collector concerned who passes the further order.

25. In the instant case, after complying with all formalities such as issuance of notice in Form I under Section 4(1) of the Act and completion of and enquiry under Section 4(2) of the Act, the second respondent, namely, the Special Tahsildar (Adi Dravida Welfare) submitted necessary proposals to the Cuddalore District Adi Dravida and Tribal Welfare Officer recommending acquisition of petitioner's land measuring 2.71.0 hectares in Keezharungunam village. After due consideration of the records available and the objection filed by the petitioner, an order dated 11.07.2002 under Section 4(3)(b) has been made to acquire the land and the said order is impugned in this writ petition. After sending a notice under Section 4(1) of the Act to the petitioner which was received by him on 28.08.2001, an enquiry under Section 4(2) of the Act was also conducted by the second respondent and the petitioner had filed his objection on 11.09.2001. After a perusal of the records and the objection filed by the petitioner, his objection was rejected by way of the impugned order dated 11.07.2002. From this, it can be seen that the procedures contemplated under the Act have been duly complied with.

26. In a Division Bench judgment of this Court reported in

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2005 3 MLJ 123 in the case of The District Collector, North Arcot Ambedkar District, Vellore and others vs. Manickam, it was held in paragraph 8 that though it may be that the Special Tahsildar, who was authorized by the District Collector, considered the objections of the land owners, the District Collector must also consider those objections and apply his own mind to those objections, as had been held in the *Wednesbury* case *(1947) 2 All.E.R. 680*. It was further held that though opportunity of hearing has been given by the person authorized by the District Collector under Section 4(2) of the Act, the District Collector must certainly apply his own mind to the objections made by the land owner to the acquisition as they affect his valuable rights.

27. A reading of the above referred Division Bench judgment would clearly reveal that at the stage of 4(2), the officer has to give a hearing to the land owner and the latter's objection has to be considered and thereafter, a report has to be sent to the District Collector who in turn, on perusal of the entire records, on satisfaction and with full application of mind, has to pass orders under Section 4(3)(b) of the Act with proper application of mind.

28. It is not the case of the petitioner that the District Collector has not applied his mind and the provision under Section 4 (2) has not been complied with. What is now contended by the petitioner is that under Section 4(3)(b), whether the officer authorized by the District Collector has called upon him to show cause as to why the land in question should not be acquired. In the case on hand, after considering the report of the Land Acquisition Officer, the first respondent, namely the District Collector has passed the order under challenge. Of course, it is to be seen whether any prejudice has been caused to the petitioner by the issuance of the impugned order and whether the first respondent has given due consideration, with proper application of mind, to all the objections raised by the petitioner.

29. Even according to the Full Bench decision of this Court referred to above whether the non-furnishing of the report of the authorized officer would be prejudicial to the interest of the petitioner or not, depends on the facts and circumstances of each case. There is a specific contention to the effect that the petitioner owns only 14 acres of land on his own and the rest of 4.61 acres are owned by his family members, namely, wife, brother, daughter and other relatives. This contention cannot be sustained as in total, the entire family owns an extent of 18.61 acres of wet and dry lands. From the records, it is inferred that the land in question is partly dry and partly wet. The lands which are the subject matter of the acquisition are no way affecting his rights and no prejudice is caused to him when the acquisition itself for a public cause i.e. to benefit the weaker sections of the society in

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order to achieve the goal enshrined under Article 46 of Part IV of the Constitution. On a perusal of the records, it is seen that acquisition is only in respect of 2.71.0 hectares of lands. Thus, even if 7 acres of land are required, he will be left with 11.61 acres with full of sugarcane crops being commercial in nature and thus, he cannot be considered as a small farmer. It is also seen from the records that the lands acquired from the petitioner's family have been allotted to the beneficiaries and they have also constructed hutments, thatched sheds and buildings and some of those who are very poor have also applied for group housing scheme loan in THADCO. Therefore, at this stage, any intervention will only cause great prejudice and hardship to the respondent and not to the petitioner. Thus, I am of the considered view that the respondents have considered all these aspects and there is no record to show that prejudice has been caused to the petitioner. Thus, when the fact is that no prejudice has been caused to the petitioner by the issuance of the impugned order, the reliance made by the counsel for the petitioner on the Full Bench judgment (supra) that the report of the Land Acquisition Officer has to be furnished to the petitioner, does not have legs to stand particularly, when the first respondent has passed the order under challenge with proper application of mind to each and every objection raised by the petitioner.

30 Further, the reliance made by the counsel for the petitioner on the judgment reported in 1998 (I) CTC 281 is not applicable to the case on hand, the reason being in that case, the appellant was in possession of no other land except the land under acquisition. But, in the present case, it is not so.

31. One more important contention raised by the learned counsel for the petitioner is that the petitioner has constructed a Samadhi on 21.08.2001 while he has received 4(1) notice only on 28.08.2001. It is to be noted that, the notice dated 09.08.2001 was sent to the petitioner by R.P.A.D.; but, it was refused by the petitioner in the first instance. Subsequently, it was sent on 21.08.2001 and the same was received by the petitioner on 28.08.2001. That apart, when there are some lands in the name of the petitioner's brother adjacent to the lands under acquisition, there is no reason as to why the petitioner has chosen his own place to construct a tombstone for his brother, that too, after knowing well the land in question is under acquisition. Thus, it is evidently clear that only to defeat the acquisition proceedings, the petitioner has chosen to construct his brother's tombstone in his land on 21.08.2001 instead of his brother's land. In other words, only to avoid the acquisition, the petitioner has taken a narrow-minded view and constructed the Samadhi. In that view of the matter, the contention of the counsel of the petitioner fails.

In the light of the discussion made above and the principle

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enshrined under Article 46 of the Constitution of India and the fact that the State Act of 31 of 1978 was enacted with a view to give effect to Directive principles of State policy, with regard to promotion of the educational and economic interest of the weaker sections of the society, I am of the considered view that the challenge made in this writ petition by way of various grounds is unsustainable, more particularly, when there is no prejudice caused to the petitioner. In that view of the matter, the impugned order dated 11.07.2002 is upheld and the writ petition, which does not merit any consideration, is dismissed without any order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

cad

To

1. The District Collector
   Cuddalore District,Cuddalore- 1

2. The Special Tahsildar
   (Adi Dravidar Welfare), Cuddalore - 1

3. The District Adi Dravidar Welfare Officer
   Cuddalore - 1

+1cc to Mr.A.S.Kailasam & Associates Sr 17342
+1cc to Govt. pleader Sr 17527

SR (CO)
km/2.4.

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